# Third Progress Report

## The President

COISTE UILE-PHÁIRTÍ AN
OIREACHTAS AR AN MBUNREACHT

THE ALL-PARTY OIREACHTAS
COMMITTEE ON THE CONSTITUTION

Baile Átha Cliath
Arna Fhoilsiú ag Oifig an tSoláthair

Le ceannach díreach ón
Oifig Dhíolta Foilseachán Rialtais
Teach Sun Alliance
Sráid Theach Laigean, Baile Átha Cliath 2

nó tríd an bpost ó
Foilseacháin Rialtais, An Rannóg Post-Tráchta
4-5 Bóthar Fhearchair, Baile Átha Cliath 2
(Teil: 01 - 661-3111 - fo-líne 4040/4045; Fax: 01 - 475 2760)
nó trí aon díoltóir leabhar.

Dublin
Published by the Stationery Office

To be purchased directly from the
Government Publications Sale Office
Sun Alliance House
Molesworth Street, Dublin 2
or by mail order from
Government Publications, Postal Trade Section
4-5 Harcourt Road, Dublin 2
(Tel: 01 – 661 3111 – ext 4040/4045; Fax: 01 – 475 2760)
or through any bookseller.

£5.00

Pn 6250

ISBN 0-7076-6161-7

Printed by Reprint Limited

The All-Party Oireachtas Committee was established on 16 October 1997. Its terms of reference are:

*In order to provide focus to the place and relevance of the Constitution and to establish those areas where Constitutional change may be desirable or necessary, the All-Party Committee will undertake a full review of the Constitution. In undertaking this review, the All-Party Committee will have regard to the following:*

*a* *the Report of the Constitution Review Group*

*b* *participation in the All-Party Committee would involve no obligation to support any recommendations which might be made, even if made unanimously*

*c* *members of the All-Party Committee, either as individuals or as Party representatives, would not be regarded as committed in any way to support such recommendations*

*d* *members of the All-Party Committee shall keep their respective Party Leaders informed from time to time of the progress of the Committee's work*

*e* *none of the parties, in Government or Opposition, would be precluded from dealing with matters within the All-Party Committee's terms of reference while it is sitting, and*

*f* *whether there might be a single draft of non-controversial amendments to the Constitution to deal with technical matters.*

The committee comprises eight TDs and four senators:

Brian Lenihan, TD (FF), *chairman*
Jim O'Keeffe, TD (FG), *vice-chairman*
Brendan Daly, TD (FF)
Senator John Dardis (PD)
Thomas Enright, TD (FG)
Séamus Kirk, TD (FF)
Derek McDowell, TD (LAB)
Marian McGennis, TD (FF)
Liz McManus, TD (DL)
Senator Denis O'Donovan (FF)
Senator Fergus O'Dowd (FG)
Senator Kathleen O'Meara (LAB)

The secretariat is provided by the Institute of Public Administration:

Jim O'Donnell, *secretary*
Karen Cullen, *assistant secretary.*

While no constitutional issue is excluded from consideration by the committee, it is not a body with exclusive concern for constitutional amendments: the Government, as the executive, is free to make constitutional proposals at any time.

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# Foreword

In its *Second Progress Report*, the All-Party Oireachtas Committee on the Constitution 1996-1997 (the O'Keeffe Committee) indicated that its next report would deal with the Presidency. The present committee has taken up that task and has completed it with the publication of this report. The committee had available to it the *Report of the Constitution Review Group* and the first two reports of the O'Keeffe Committee.

_____

Brian Lenihan, TD

*Chairman*

November 1998

# The President

# The President

Ireland has opted for a cabinet form of government. This is the most common form of government found in Western Europe.

With the advent of modern democracy, the powers of the state were vested in popular representatives or their nominees. However, monarchies tended to retain the ceremonial functions of the state in the person of a monarch. The tendency in republican forms of government was to develop the office of a president as a ceremonial personification of the state. Of the fifteen member states of the European Union, seven are monarchies and eight are republics. All the monarchs and all the presidents are ceremonial heads of state, although in France and Finland the presidents have certain important executive functions as well.

The committee agrees with the general view of the Constitution Review Group that the Constitution properly provides for the separation of the three fundamental powers of the state — the legislative, executive and judicial. Consistent with this principle the Constitution provides for a President 'free from executive functions — and the divisiveness which political activity would necessarily entail', who in effect discharges the ceremonial functions of the state in a non-partisan manner. Appendix I contains a comparative table of the EU presidencies.

The committee discussed nineteen issues relating to the President.

**1 whether the office of President should continue to exist**

The committee agrees with the view of the Constitution Review Group that the office of President should continue:

> ... there is no public demand or good reason for abolition of the office. A State requires a Head of State; the President's function as guardian of the Constitution requires that the office be separate from the executive.

The committee however does not agree that the President should be formally described as Head of State. Popular election of the President both elevates the President and forms a bond between the people and the President which is well reflected in Article

**12.1** There shall be a President of Ireland (Uachtarán na hÉireann), hereinafter called the President, who shall take precedence over all other persons in the State and who shall exercise and perform the powers and functions conferred on the President by this Constitution and by law.

12.1 where the President is described as the 'person who shall take precedence over all other persons in the State'.

The term 'Head of State'— a literally statist one — would tend to relate the people to an abstraction rather than a person. In any event change is unnecessary. Of the seven other republics in the European Union, only Italy describes its President in its constitution as its Head of State, yet all presidents act as such.

*Recommendation*

Article 12.1

No change is proposed.

## 2 External relations

Under the Constitution of the Irish Free State 1922 Ireland had the status of a dominion within the Commonwealth, whose head was the British monarch. On his accession to power in 1932, Mr de Valera removed from the Constitution of Saorstát Éireann various legal provisions which tied the Irish Free State to the Commonwealth. However, Mr de Valera believed some link ought to be maintained with the Commonwealth because of the Northern Ireland question. The Executive Authority (External Relations) Act 1936 secured this. It provided that so long as Saorstát Éireann was associated with the Commonwealth, the British monarch would appoint diplomatic and consular agents and sign international agreements on behalf of Saorstát Éireann, on the advice of the Executive Council.

**29.4.2°** For the purpose of the exercise of any executive function of the State in or in connection with its external relations, the Government may to such extent and subject to such conditions, if any, as may be determined by law, avail of or adopt any organ, instrument, or method of procedure used or adopted for the like purpose by the members of any group or league of nations with which the State is or becomes associated for the purpose of international co-operation in matters of common concern.

When *Bunreacht na hÉireann* was enacted in 1937, it provided in Article 29.4.2° constitutional cover to the Executive Authority (External Relations) Act 1936 by giving the government a general power which allowed it to continue the practice in relation to external relations laid down in the Act. The Articles dealing with the functions of the President made no mention of functions in relation to external relations. When in 1948 the government decided to leave the Commonwealth, it simply repealed the Executive Authority (External Relations) Act 1936 and enacted the Republic of Ireland Act, which assigned those functions to the President. Section 3 of that Act reads:

> The President, on the authority and on the advice of the Government, may exercise the executive power or any executive function of the State in or in connection with its external relations.

When the Committee on the Constitution 1967 examined this issue, it felt the position should be tidied up by explicit statement in the Constitution. The present committee agrees with this and proposes that section 3 of the Republic of Ireland Act 1948 should be inserted in the Constitution in Article 13 which deals with the powers and functions of the President.

*Recommendation*

Article 13

Insert a new section 6 after section 5 as follows:

> The President, on the authority and on the advice of the Government, may exercise the executive power or any executive function of the State in or in connection with its external relations.

Renumbering of subsequent sections will be required.

### 3 whether there should be direct elections

**12.2.3°** The voting shall be by secret ballot and on the system of proportional representation by means of the single transferable vote.

The committee agrees with the Constitution Review Group 'that there is no public demand for change and that it may be inferred that the people wish to retain their right to vote directly for a President'.

The Constitution Review Group observed that the term 'proportional representation' denotes the filling of a number of seats by different parties in proportion to the votes they receive. The term cannot refer to the filling of a single seat. It recommended the deletion of the words 'and on the system of proportional representation'. The committee agrees with this technical change.

*Recommendation*

Amend Article 12.2.3º by deleting the words:

> 'and on the system of proportional representation'.

**12.4.2°** Every candidate for election, not a former or retiring President, must be nominated either by:

i not less than twenty persons, each of whom is at the time a member of one of the Houses of the Oireachtas, or

ii by the Councils of not less than four administrative Counties (including County Boroughs) as defined by law.

**4 whether the procedure for nominating a presidential candidate is too restrictive**

The committee agrees with the Constitution Review Group that the constitutional requirements for nominating a presidential candidate are too restrictive and in need of democratisation. It recommends the following measures to loosen the nomination procedure:

a) *alter provisions for indirect nomination*

Ten should be the minimum number of members of the Houses of the Oireachtas required for nomination rather than twenty. The number of county councils and county boroughs should remain at four.

b) *provide for popular nomination*

Popular nomination would give the people an opportunity to nominate candidates directly. However it leaves open the possibility that the office of President could be demeaned by the nomination of frivolous candidates or endangered by the nomination of inadequately qualified ones. The President must have the presentational skills that will allow him or her to represent the state with style and dignity both within the state and outside it. The President must have the analytical skills to allow him or her to exercise the discretionary powers, which bear upon important legal and political matters; and the President must have the firmness to assert and sustain the status of the office of President against the encroachment of any of the other national institutions. The procedures surrounding popular nomination to the presidency must therefore be such as to discourage frivolous nominations and encourage carefully evaluated ones.

The committee considered the Eighteenth Amendment of the Constitution Bill 1997, promoted by Deputy Jim O'Keeffe in the Dáil. It provides for popular nomination as follows:

> by not less than twenty thousand citizens each of whom is entitled for the time being to vote in an election held under this Article [Article 12], such nomination to be made in a manner prescribed by law.

The committee sought to assure itself that legislation could be drawn up which would tightly specify the procedures for nomination. It also examined the issue of what was the appropriate number of nominators.

*procedures*

It is critically important to the legitimacy of a democratic election that all the procedures surrounding it should be fair. As far as popular nomination is concerned each nomination should be carefully validated. The committee therefore decided to determine that an adequate validation system could be provided for by legislation before considering the minimum number of people who would be necessary for the nomination of a candidate.

First of all, the committee found that the systems used for popular nomination in Finland and Portugal provide legislators with the elements for a strict but practical regime for validating nominations.

In Finland, presidential candidates may be nominated by a political party which has at least one member in parliament or by 20,000 voters. For popular nominations, according to the Finnish Parliament Information Office and the Press and Information Office of the Finnish Ministry of Justice, nomination cards must be collected from 20,000 registered voters to nominate a candidate. Each card contains specific information: the name of the nominee (proposed presidential candidate), basic details of the identity of the nominator, his or her signature, the date and the name of the person who is responsible for collecting the 20,000 nomination cards. The cards are then passed to the election officials in the Central Election Board in Helsinki. Nominations must be completed at the earliest forty-one days and at the latest thirty-one days before the presidential election. Furthermore, the dates and signatures on the cards must not be more than one year old. The Central Election Board counts the cards and checks that they contain all the information required by law, but the names or the signatures are not verified individually. In practice, they are checked by sight and if there is any reason to be suspicious, the details are checked against the voters' register.

In Portugal, the constitution sets out that between 7,500 and 15,000 registered voters are required to nominate a candidate. According to the Portuguese Embassy in Dublin, a nominator must complete a special nomination form setting out his or her name, address and electoral card number as well as the name of the candidate. He or she brings the form to his or her local authority office, where he or she is required to provide proof of identification. The form is then impressed with a stamp bearing the date and the name and address of the particular local authority office. He or she then delivers the form to the candidate. The candidate lodges the forms with the Electoral Commission, which has the task of counting the forms and confirming the validity of each form. The procedure must be completed within thirty-one days of the election.

*an Irish regime*

The committee set out to explore a practical regime for Ireland and acknowledges the assistance it received from officers of the Department of the Environment and Local Government. The committee believes that nominations should be gathered on an official form such as that outlined below.

| Presidential election (date)<br>Nomination form in support of _____ (candidate) | | | |
|---|---|---|---|
| Name of nominator | Number on register | Registration authority | Identity verified |
| | | | |

Each nominator would be required to go to any one of a number of specified public offices that hold a copy of the register of electors to sign the nomination form and have his or her identity verified and signature authenticated by a supporting document such as a driving licence or passport. At present a copy of the register of electors is available at local authority offices, libraries, post offices and garda stations. The offices of county registrars and city and county sheriffs might also be made available for nomination purposes. A computer programme would probably need to be developed to assist the process and to ensure that a nominator nominates only one candidate and does so once only. A number of matters would need to be attended to by legislation:

- procedures to ensure that potential candidates, before the process begins, give public consent to being nominated
- restriction of the right to nominate to persons who appear on the electoral register on a particular date (the register appears in November and a supplement appears in February)
- procedures to allow electors who are unable to go to the designated location for nomination, for example the sick or disabled, to nominate
- rules in relation to the delivery of the forms to the returning officer
- provision of procedures and time for ruling on nominations.

The committee believes that while the nomination procedure would involve practical difficulties and extra expense it would be feasible.

*nominators*

If the validation process were to be applied to a number so great that it was unlikely that anyone would be actually nominated, the system would be practically inoperable.

Since the presidency is a national office, the number of nominators required should be such as to ensure candidates with broad rather than simply local support. Moreover, the time available to mount a campaign has a bearing on the operability of a popular nomination system. Since in Ireland the office of President must be filled within sixty days, the committee believes that the requirement of 20,000 nominators would be too exacting. It recommends the figure of 10,000 as being one that requires widespread and, in terms of the time available, achievable support for a candidacy. Finland, which in 1995 had 3,882,661 registered voters and required 20,000 nominators, produced one popularly nominated candidate for the presidential election in 1988 and four for that in 1994.

*Recommendation*

Amend Article 12.4.2° to read:

> 2° Every candidate for election, not a former or retiring President, must be nominated by
>
> i not less than ten persons, each of whom is at the time a member of one of the Houses of the Oireachtas, or
>
> ii the Councils of not less than four administrative Counties (including County Boroughs) as defined by law, or
>
> iii not less than ten thousand citizens, each of whom is entitled for the time being to vote in an election held under this Article, such nomination to be made in a manner prescribed by law.

## 5 whether the powers of the President should be extended

In general the committee endorses the conclusion of the Constitution Review Group that the President should not be given further discretionary powers. The symbolic value of the office derives from the detachment of the holder from partisan politics. However, the committee did consider whether the President should have the power to administer a national honours system.

The impulse to honour someone who has performed exceptional services for the people, perhaps over a sustained period, is an admirable one. In Ireland, unlike in all the other member states of the EU, there is no overall state awards system. There are a number of schemes sponsored by the state for particular groups or particular kinds of endeavour. The schemes are listed in Appendix II. In addition, certain institutions, such as local authorities and universities have the capacity to honour notable people, whether they be citizens or non-citizens, through the conferring of honorary degrees or the freedom of a town or city. Moreover, there are a number of voluntary award schemes.

The question of instituting a national honours system has been raised in a desultory manner by governments since 1930, but for a variety of reasons — the over-riding political concern with the introduction of *Bunreacht na hÉireann* in 1937, the emergency, post-war economic depression, the troubles in Northern Ireland — the necessary all-party consensus was not forthcoming.

On 24 June 1998, in reply to a parliamentary question as to whether he would consider a civil honours list the Taoiseach stated that 'as we enter the twenty-first century it is now appropriate to examine the issue and to show our maturity by possibly putting in place for the millennium a system to properly honour those in society who have made a fundamental contribution and not to leave it to other countries and organisations to do it for us'.

He indicated that he would write to party leaders asking for their views on how to proceed with the matter, and if there was support for the idea across a majority of the parties he would be happy to examine the matter in greater detail.

The committee, which is representative of the major political parties in the Dáil, endorses the value of a national honours system — it would give to Ireland a stimulus to excellence and it would enhance diplomatic relations by allowing the state to reciprocate honours conferred on Irish citizens by foreign governments. The committee believes that leaving decisions on the honours system to the President would elevate the system above partisan claims as well as give it the prestige which attaches to the elected office of the President.

As with most of the other discretionary powers of the President, this proposed additional power should be exercised only after consultation with the Council of State.

*origins*

**40.1** All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

**40.2.1°** Titles of nobility shall not be conferred by the State.

**40.2.2°** No title of nobility or of honour may be accepted by any citizen except with the prior approval of the Government.

In Europe, state honours systems derive from the medieval monarchies. Two main kinds of honours were awarded: titles of nobility (peerages), which sought to ennoble certain individuals and their descendants, and orders of merit, which provided titles of honour (knighthoods) for commoners. Some historical details in regard to the United Kingdom may be found in Appendix III.

Titles of nobility raise certain citizens above the mass of their fellows by according them civic privileges and are anathema to democratic republics. Hence, when the Dáil was debating the draft Constitution in 1937, titles of nobility were specifically prohibited under Article 40, the Article dealing with equality of persons.

However, many republics have an honours system. The US constitution provides that no title of nobility shall be granted and 'no person holding any office of profit or trust under them shall, without the consent of Congress, accept any present, emolument, office or title of any kind whatever from any king, prince or foreign state'. Notwithstanding that, the USA has an honours system based on awards made both by the President and the Congress. Details for the United States are set out in Appendix III.

Austria, Bulgaria, Croatia, the Czech Republic, Estonia, Greece, Hungary, Italy, Lithuania, Macedonia, Poland, Portugal, Romania, the Russian Federation, the Slovak Republic and Slovenia all provide in their constitutions for the conferral of honours. In each case, the power of conferral is the prerogative of the president. Finland, France and Germany have honours systems based on legislation, and in those states, too, the power of conferral is the prerogative of the president. Details for Finland, France, Germany and Italy are set out in Appendix III.

*Is an honours system constitutional?*

In the original draft of Article 40.2.1º there was a second sentence which read 'Orders of Merit may, however, be created'. In the subsequent debate in the Oireachtas this sentence was deleted. Some found it difficult to distinguish between titles of nobility and titles of honour. Others felt that orders of merit were open to gross abuse. As Deputy Norton argued, 'it often means that the greatest party hack, the greatest "yes-man", the greatest rubber-stamp in a political party puts out his hand and gets a title in return for that kind of servile loyalty or as a return for a cheque to the party funds' (*Dáil Debates,* 2 June 1937, p 1626).

However, Article 40.2.2º allows a citizen to accept either a title of nobility or of honour from another state with the prior approval of the government. By distinguishing between titles of nobility and titles of honour in this Article, it may be inferred that the prohibition on the state to confer titles of nobility in Article 40.2.1° does not preclude it from conferring titles of honour. Indeed Mr de Valera declared himself content to omit the provision of an order of merit if the state's capacity to create an order of merit in the future was not jeopardised.

The committee believes that the question of the state's capacity to introduce an order of merit should be put beyond doubt. Express provision should be made in Article 13, which deals with the powers and functions of the President, to allow the President, in consultation with the Council of State, to confer titles of honour, which would be non-hereditary and — to assert their honorary character — non-remunerative, on both citizens and non-citizens.

By giving the power of conferral to the President, Ireland would align itself with the majority of other western republics that have orders of merit.

Administrative procedures in relation to the honours system covering such issues as who may put forward nominations for honours, what type of services would be honoured, whether there would be classes of honour, and how frequently honours would be awarded, would be determined by the President.

*Recommendation*

Article 13

Insert after the new section 6, a new section 7 as follows:

1° The President may at any time and from time to time by warrant under his or her Seal confer titles of honour upon such persons as, in his or her absolute discretion, he or she may think fit, after consultation with the Council of State

2° This section shall have effect notwithstanding Article 40.2.2°.

Renumbering of subsequent sections will be required.

## 6 the minimum age of eligibility for the office of President

**12.4.1°** Every citizen who has reached his thirty-fifth year of age is eligible for election to the office of President.

Article 12.4.1° states that 'Every citizen who has reached his thirty-fifth year of age is eligible for election'. The committee believes that there is no logical reason for setting the age at which one becomes eligible to be President at a greater age than that at which one may exercise the right to vote in elections, namely eighteen years. It believes that young people should be encouraged to engage in politics. It also believes that any young candidates who succeed in being nominated either indirectly through the political system or directly through the popular nomination system recommended by the committee would be exceptional and worthy candidates.

The committee therefore disagrees with the majority view of the Constitution Review Group that favours no change, or only a minor reduction, in the age limit.

**16.1.1°** Every citizen without distinction of sex who has reached the age of twenty-one years, and who is not placed under disability or incapacity by this Constitution or by law, shall be eligible for membership of Dáil Éireann.

The committee also noted that J M Kelly's *The Irish Constitution* refers to a possible conflict between the Irish text and the English text of Article 12.4.1°. The Irish text requires a presidential candidate to have completed thirty-five years of age ('ag a bhfuil cúig bliana tríochad slán'), while the English text requires him or her only to have 'reached his [or her] thirty-fifth year of age' which one would do on one's thirty-fourth birthday. The committee consulted with Rannóg an Aistriúcháin, Houses of the Oireachtas, and concluded that the English text could be improved by using the formulation set out in Article 16.1.1° – 'who has reached the age of…' – thus making the English text both unequivocal and consistent with the Irish text.

*Recommendation*

Amend Article 12.4.1° to read:

> Every citizen who has reached the age of eighteen years is eligible for election to the office of President.

## 7 whether the President should have a discretion to refuse a dissolution of Dáil Éireann

**13.2.1°** Dáil Éireann shall be summoned and dissolved by the President on the advice of the Taoiseach.

Article 13.2.1° declares, 'Dáil Éireann shall be summoned and dissolved by the President on the advice of the Taoiseach'. This provision accords with the general constitutional presumption that the Presidents accedes to the requests made by the head of the government.

**13.9** The powers and functions conferred on the President by this Constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided by this Constitution that he shall act in his absolute discretion or after consultation with or in relation to the Council of State, or on the advice or nomination of, or on receipt of any other communication from, any other person or body.

**13.2.2°** The President may in his absolute discretion refuse to dissolve Dáil Éireann on the advice of a Taoiseach who has ceased to retain the support of a majority in Dáil Éireann.

However, under Article 13.2.2° 'the President may in his [or her] absolute discretion refuse to dissolve Dáil Éireann on the advice of a Taoiseach who has ceased to retain the support of a majority in Dáil Éireann'. No President has exercised this power to date.

The power to refuse a dissolution is found in other constitutions in the common law world. Professor James Casey in his *Constitutional Law in Ireland* points out:

> The view generally held is that a dissolution can be refused only if an alternative government is feasible, can be assured of a working majority and can be expected to carry on for a reasonable period of time. Similar considerations must apply to the President's power under Article 13.2.2°; and the difficulty of predicting whether these conditions will be fulfilled need hardly be stressed. Consequently, to allow a dissolution will normally be the wiser and less controversial course.

The Constitution Review Group discerned ambiguity over how a President may determine whether or not the Taoiseach has ceased to retain the support of the Dáil:

> Is a Dáil vote necessary? Or is a public announcement of withdrawal of support by a crucial number of deputies sufficient? If a Taoiseach sought to pre-empt the President's exercise of discretion by advice to dissolve the Dáil in advance of a Dáil vote, might not the President be able somehow to satisfy himself or herself that the Taoiseach had lost the support of the Dáil and therefore refuse a dissolution?

It considered three ways of removing the ambiguity: give the President an absolute discretion to dissolve Dáil Éireann, allow the Taoiseach to dissolve Dáil Éireann at will, or define in the Constitution the circumstances in which the President might refuse a dissolution, such as, following the loss of a vote of confidence or the rejection of a budget.

A majority of the Constitution Review Group concluded that a constructive vote of no confidence would be preferable to the present position. By a constructive vote of no confidence was meant a vote of no confidence which would at the same time nominate a new Taoiseach.

When the All-Party Oireachtas Committee on the Constitution 1996-1997 (the O'Keeffe Committee) came to consider the issue, it took a different approach. It did not share the Constitution Review Group's deep concern to remove the President from the risk of any political taint so completely that all discretion is removed from him or her:

> … there could be grave circumstances such as a time of violent civil unrest or invasion by foreign forces, when the preservation of the state might be best secured by a President's refusal to dissolve the Dáil — and therefore the source of the central authority within the state — simply at the request of a Taoiseach who had ceased to retain the support of a majority of Dáil Éireann.

The constructive vote of no confidence proposed by the Constitution Review Group is aimed at extending the life of a Dáil by giving it the power to elect a new Taoiseach when it has defeated the incumbent Taoiseach. It felt that such a provision would give the Dáil another check on the power of a Taoiseach; it would also help to reduce the number of elections and increase the stability of government.

However, the O'Keeffe Committee saw a difficulty flowing from the constructive vote of no confidence: it could facilitate stable but weak government over the period of a Dáil's term. As it put it:

> A weak government formed following a general election may seek to avoid a constructive vote of no confidence by pandering to the interest of the opposition and a weak government which has come into power following the success of a vote of no confidence may seek to avoid all difficult issues in order not to provoke another constructive vote of no confidence. The mechanism might thus leave the people powerless to install a strong government.

It concluded that:

> … a sensible balance between the power of the people and of the Dáil would be struck if a Taoiseach who had lost the support of the Dáil were granted a dissolution by the President only if within ten days from the vote of no confidence the Dáil has not elected a new Taoiseach. There would of course be a need to define what would indicate the Taoiseach's loss of support of a majority in the Dáil. The Committee recommends the following indications: the loss of a vote of confidence or the loss of a vote of no confidence or the loss of a motion to approve or modify a charge upon the people or to appropriate revenue or other public monies (other than a charge or expenditure, as the case may be, which is subordinate and incidental to a legislative proposal).

It felt further that the President should have absolute discretion to deal with the more frequent circumstances where the Taoiseach informally ceases to retain the support of a majority in Dáil Éireann. The commonest example is where a coalition partner has indicated publicly that it is withdrawing from the government. The O'Keeffe Committee proposed that:

> … where the President deems a Taoiseach, who requests a dissolution of the Dáil, to have ceased to retain the support of a majority in the Dáil, the President should have power to summon the Dáil within three days to vote on a motion of confidence in the Taoiseach. If the vote of confidence is carried, the President shall accede to the Taoiseach's request and dissolve the Dáil. If the motion of confidence is lost by the Taoiseach, the President shall dissolve the Dáil if within ten days the Dáil has not elected a new Taoiseach.

The present committee considered the conclusions of both the Constitution Review Group and the O'Keeffe Committee.

The committee was concerned that the definition of the circumstances in which the President might refuse a dissolution would lead to a practice whereby Presidents refused dissolutions as a matter of course. The existence of a specific procedure for testing a putative position would tend to create the expectation that it would be called into use. This would lead to the further complication that failure to call it into use might be viewed as a political act in itself. All this would increase rather than decrease the involvement of the President in the strategy and calculation of the political parties.

**28.10** The Taoiseach shall resign from office upon his ceasing to retain the support of a majority in Dáil Éireann unless on his advice the President dissolves Dáil Éireann and on the reassembly of Dáil Éireann after the dissolution the Taoiseach secures the support of a majority in Dáil Éireann.

The power to refuse a dissolution is discussed by Michael McDunphy in his work *The President of Ireland* published by Browne and Nolan Limited, Dublin in 1945. Mr McDunphy was secretary to the first President of Ireland, Dr Douglas Hyde. As such his views must carry considerable weight.

Mr McDunphy states:

> … the President is in two cases invested by the Constitution with executive power of a very real nature.
>
> The first of these relates to the right of the Taoiseach to ask for a general election. In normal cases where the Taoiseach commands a majority in the Dáil, the President must, if the Taoiseach so advises, dissolve Dáil Éireann and proclaim a general election (Article 13.2.1°). Should the Taoiseach, however, have failed to retain the support of a majority in Dáil Éireann, the President may, in his absolute discretion, refuse to act on that advice (Article 13.2.2°), thereby obliging the Taoiseach to resign (Article 28.10), and giving an opportunity to the Dáil to nominate a new Taoiseach for appointment by the President.
>
> The second of these important powers is that which enables the President at any time, after consultation with the Council of State, to convene a meeting of either or both of the Houses of the Oireachtas (Article 13.2.3°).

Both of these powers, although primarily executive in their nature, are closely related to the formation and functioning of Parliament, and to that extent they belong also to the legislative sphere of authority.

The phrase 'in his absolute discretion' used in connection with the first of these powers, viz., the right of the President to refuse a dissolution to a Taoiseach who has failed to retain the support of a majority in Dáil Éireann, stresses the very wide difference between this and the merely formal functions …. Here we find the President endowed with an authority entirely his own, independent of the Taoiseach, independent of the Government, independent of the Oireachtas, not answerable even to the Supreme Court, which is the final authority on matters of constitutional validity. The President's power in the matter is absolute; in its exercise he is governed only by his personal judgment of what is best for the people, and his decision, when made, is final and unchallengeable.

The stipulation in the case of the second of these powers, that the President must first consult with the Council of State, does not in any way detract from the President's right to make his own decision. The advice of that body, however influential, is not binding on the President.

Although these powers are drastic, they are in no sense dictatorial. It is true that the immediate decision in each case rests with the President, but the purpose of that decision is merely to prevent an undesirable use or non-use of powers by the authorities in whom they are normally vested, and, where necessary, to transfer the right of judgment to a higher tribunal, in one case Dáil Éireann, and in the other, either or both of the Houses of the Oireachtas.

… The Constitution gives no indication as to the evidence which would entitle the President to decide that a Taoiseach had in fact ceased to retain the support of a majority in Dáil Éireann. Nor is there yet available any empirical material which might enlighten the student of Constitutional law on this point, as no case has so far occurred of a refusal by the President to grant a dissolution.

Granted that such a situation has arisen, the President has to consider which of the two decisions open to him, to grant or to refuse a dissolution, is likely to be the better for the country. For such a case no rules can be laid down. The responsibility rests entirely with the President. He is not required to consult with any other person or authority, not

even with the Council of State, which figures so largely in other important matters. The decision is his own, made entirely on his own judgment, and he is not bound to state his reasons. At the same time it must be assumed that the President would be slow to refuse a dissolution except for very adequate reasons.

This power is unique in the Irish Constitution. It is the only case in which the President has an absolute and unquestionable right to act in direct opposition to a constitutional request from the Head of the Government, to reject an advice which in other matters is equivalent to a direction, which must be complied with as a matter of course.

… Apart from his power, exercised on the advice of the Taoiseach, to summon the Dáil after a general election, the President may at any time on his own volition, after consultation with the Council of State, convene a meeting of either or both of the Houses of the Oireachtas (Article 13.2.3°), so that if, at any time, the normal machinery for that purpose is for any reason inoperative, an assembly of either or both of the Houses can be convened by the President himself.

**13.2.3°** The President may at any time, after consultation with the Council of State, convene a meeting of either or both of the Houses of the Oireachtas.

The committee is of the opinion that the powers vested in the President are sufficient to empower the President to make an independent judgment on the issue of whether a Taoiseach has lost the support of a majority in Dáil Éireann. In this connection it should be noted that the President has power to convene a meeting of Dáil Éireann after consultation of the Council of State under Article 13.2.3°. The President should continue to have absolute discretion to act in situations of national danger or distress where the Dáil's capacity to produce an alternative Taoiseach is deemed by the President to be preferable, from the point of view of the national interest, to a dissolution and a general election. Article 13.2.2° provides such a power and does so with the economy necessary in a Constitution for dealing with rare and indeterminate contingencies.

*Recommendation*

Article 13.2.2°

No change is proposed.

**8 whether the President should have a role in the formation of a new government**

Article 13.1.1° and 13.1.2° gives the President no discretion in the selection of a new Taoiseach and government. This is quite usual in parliamentary government systems. Of nineteen Western European states surveyed, in only five does the head of state play an active role in government formation. Its absence in our Constitution could be taken to underscore a desire to maintain a position for the President impeccably remote from party politics.

The Constitution Review Group considered two problems that may present themselves in the formation of a new government:

i) where a new Dáil assembles and no party or group of parties has an overall majority.

In such circumstances Irish parties have shown themselves as being obliged by the electorate to construct a stable government based on an agreed programme. The Constitution Review Group did not feel that the intervention of a President would secure such a government more quickly and recommended that the President should not be given any role in this circumstance. The committee agrees with this.

ii) where a government resigns voluntarily or on foot of a vote of no confidence, or the threat of one.

A problem can arise where the Dáil cannot agree quickly on a nominee for Taoiseach and a defeated government may be faced with a protracted term in office on an acting basis. Some parliamentary government systems address this problem in one of two ways:

1) the head of state is given a role in the process of identifying a new prime minister

2) a constructive vote of no confidence is used to force the legislature to nominate a new prime minister when voting no confidence in the old one.

On this issue the Constitution Review Group concluded that its proposal to introduce a constructive vote of no confidence is preferable to increasing the powers of the President in the government formation process.

At 7 above the committee decided not to endorse the recommendation of the Constitution Review Group to introduce a

constructive vote of no confidence and therefore disagrees with its conclusion here. Furthermore it believes that intervention by the head of state would be no more advisable in this case than it would be in the first case above where no party has an overall majority. Moreover the committee does not feel that the issue is an urgent one: the government formation process in Ireland has not, broadly speaking, been a perplexing one. The committee therefore recommends no change.

*Recommendation*

Article 13.1.1° and 13.1.2°

No change is proposed.

**Article 18.1-3 of the UN International Covenant on Civil and Political Rights**

**18.1** Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

**18.2** No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

**18.3** Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others.

## 9 declaration upon entering office

The Constitution Review Group noted the UN Human Rights Committee's concern in their report on Ireland of August 1993 about the religious aspects of the President's declaration under Article 12.8: 'The constitutional requirement that the President and judges must take a religious oath excludes some people from holding these offices'. Ireland ratified the UN International Covenant on Civil and Political Rights on 8 December 1989 and our laws must be in conformity with the principles laid down in the covenant. In its second national report under the covenant to the UN Human Rights Committee, the state, referring to the Committee's comment, pointed out that no practical problems had arisen to date and that the All-Party Oireachtas Committee on the Constitution was reviewing the matter because a change in the declaration would require a constitutional amendment.

The issue of obliging people to take oaths which offend their religion or philosophy has long been met by the Irish courts which allow witnesses and jurors to make a simple affirmation rather than take an oath.

In the case of the declaration required of constitutional officers upon entering office, the committee believes that the issue can be resolved with the greatest satisfaction by offering such officers the option to omit the religious reference. This would allow those who have religious beliefs to make their declaration with what they believe is the fullest force. It allows those who have no religious beliefs to make a non-religious declaration. It respects the view of those who, though they have religious beliefs, nonetheless hold that because of the pluralist principle it is inappropriate to force a religious declaration on anyone.

The committee notes that a religious oath, though compulsory in Greece, is optional in most countries. Iceland and Malta, which

have a state religion, allow presidents to swear an oath or make a non-religious declaration.

**12.8** The President shall enter upon his office by taking and subscribing publicly, in the presence of members of both Houses of the Oireachtas, of Judges of the Supreme Court and of the High Court, and other public personages, the following declaration:—

> "In the presence of Almighty God I, , do solemnly and sincerely promise and declare that I will maintain the Constitution of Ireland and uphold its laws, that I will fulfil my duties faithfully and conscientiously in accordance with the Constitution and the law, and that I will dedicate my abilities to the service and welfare of the people of Ireland. May God direct and sustain me."

*Recommendation*

Add the following to Article 12.8:

> The President may omit the religious references.

### 10 period of office

The committee agrees with the Constitution Review Group that the term of office of the President should remain unchanged.

### 11 messages or addresses to the nation

**13.7.1°** The President may, after consultation with the Council of State, communicate with the Houses of the Oireachtas by message or address on any matter of national or public importance.

**13.7.2°** The President may, after consultation with the Council of State, address a message to the Nation at any time on any such matter.

**13.7.3°** Every such message or address must, however, have received the approval of the Government.

Under Article 13.7.1°-2°, the President may address a message to the Houses of the Oireachtas or the nation after consultation with the Council of State. Article 13.7.3° provides that every such message or address must have received the approval of the government. The provision in Article 13.7.3° seems drafted in terms wide enough to cover both messages to the Oireachtas and to the nation in subsections 1° and 2° respectively, and indeed this is how it is interpreted officially. In practice, not only is approval sought to send a message, but the contents of the message must also be approved. The committee feels that this is the correct procedure, given that the purpose of the Article is to prevent public embarrassment between the government and the President. The purpose would be thwarted if, having permission to send a message, the President sent a message that contained statements contrary to the views of the government. However, given modern communications, it could be argued that every time the President makes a speech at a dinner or other function, it is in fact a message to the nation. The Department of the Taoiseach does not hold this literal interpretation and the committee agrees with the Department. (In any case, in practice, presidential speech material is often drawn from various Departments.)

As the Constitution Review Group expressed it:

> … matters of this kind are best left to the wisdom and sense of propriety of those entrusted with high public office.

### 12 the Presidential Commission

The committee agrees with the Constitution Review Group that no change is necessary to Article 14.

### 13 freedom of travel

**12.9** The President shall not leave the State during his term of office save with the consent of the Government.

Article 12.9 provides that the President shall not leave the state without the consent of the government. A view is sometimes expressed that this position is too restrictive and that the President should surely be permitted to travel on private business abroad without the necessity of seeking government approval. This argument has only a superficial appeal. When a President holidays in another country, the media and indeed the officials in that country will learn of the fact and the public's attention will be drawn to it. What was a private visit may suddenly turn into an official visit, if the head of state formally invites the President for dinner and so on.

There are of course other practical considerations. The government needs to know if the President will be available to dissolve the Dáil or sign a Bill into law (although these functions could be carried out by the Presidential Commission in emergencies). Not least, there is an obvious security issue behind the policy set out in the Article.

*Recommendation*

Article 12.9

No change is proposed.

### 14 'any other office or position of emolument'

**12.6.3°** The President shall not hold any other office or position of emolument.

Article 12.6.3° provides that the President 'shall not hold any other office or position of emolument'. The committee agrees with J M Kelly's *The Irish Constitution* that the drafters of the Constitution did not intend to prevent the President from holding honorary offices. Indeed the Red Cross Act 1944 makes the President ex officio honorary President of the Irish Red Cross Society. An amendment is needed to clarify this.

*Recommendation*

Add to Article 12.6.3° :

'or any other position inconsistent with the office of President'.

**13.6** The right of pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction are hereby vested in the President, but such power of commutation or remission may, except in capital cases, also be conferred by law on other authorities.

### 15 capital cases

Article 13.6 makes a reference to 'capital cases'. Because the death penalty was abolished by section 1 of the Criminal Justice Act 1990, this reference should be deleted.

*Recommendation*

Article 13.6

Delete ', except in capital cases,'.

### 16 the people of Northern Ireland and emigrants: presidential elections

In the context of the Good Friday Agreement the Taoiseach wrote to the chairman of the committee to enquire whether the committee might examine

> … how people living in Northern Ireland might play a more active part in national political life, to the extent that they so desire and in a spirit consistent with the principles underlying the peace settlement.

The Taoiseach continued:

> I would ask you to have the committee actively consider the proposals that MPs elected in the North should be entitled to sit in the Dáil and that Irish citizens living in the North should be entitled to vote in presidential elections and referendums.

In addition, the committee had earlier received submissions from emigrant groups on how emigrants might play a part in national political life. For both groups the issues in relation to presidential elections arises and in both cases other issues arise as well. The committee therefore has decided to publish a separate report dealing with all the constitutional issues relating to both the people in Northern Ireland and emigrants.

**31.2** The Council of State shall consist of the following members:

i As *ex-officio* members: the Taoiseach, the Tanáiste, the Chief Justice, the President of the High Court, the Chairman of Dáil Éireann, the Chairman of Seanad Éireann, and the Attorney General.

ii. Every person able and willing to act as a member of the Council of State who shall have held the office of President, or the office of Taoiseach, or the office of Chief Justice, or the office of President of the Executive Council of Saorstát Éireann.

iii. Such other persons, if any, as may be appointed by the President under this Article to be members of the Council of State.

**31.4** Every member of the Council of State shall at the first meeting thereof which he attends as a member take and subscribe a declaration in the following form:

"In the presence of Almighty God I, , do solemnly and sincerely promise and declare that I will faithfully and conscientiously fulfil my duties as a member of the Council of State".

### 17 Council of State: technical amendment

Article 31.2.ii envisages membership of the Council of State by a person who has held the office of President of the Executive Council of Saorstát Éireann. This provision is obsolete.

*Recommendation*

Delete from Article 31.2.ii the words:

> 'or the office of President of the Executive Council of Saorstát Éireann'.

### 18 Council of State: declaration of members

As with the proposal for the President, members should be allowed to omit the religious reference.

Recommendation

Add the following to Article 31.4:

> A member of the Council of State may omit the religious reference.

### 19 Council of State: additional political members

In view of the committee's recommendation that the President should have power to award titles of honour after consulting with the Council of State it would seem appropriate that in order to provide the President with adequate advice on these awards the membership of the Council of State should cover the broad spectrum of politics. The committee believes that this dimension of the Council would be enhanced if the President were empowered to nominate two members of the Dáil who belong to parties other than the party or parties that form the government for the life of that government. The committee therefore favours a further amendment to secure that.

# Appendices

# Appendix 1

## The President: *comparisons with EU republics*

| **State** (date of enactment of constitution) | **Description of President** | | **Election** | | **Nomination Procedure** |
|---|---|---|---|---|---|
| | Head of State | Other | Popular | Other | |
| **Austria** 1929 | | The Federal President | Yes | | Legislation provides that a candidate may be nominated by five members of parliament or 6,000 registered voters. |
| **Finland** 1919/94 | | The President of the Republic | Yes | | By a political party (with at least one member in parliament) or 20,000 voters. |
| **France** 1958 | | The President of the Republic | Yes | | By 500 elected members (either from the parliament, regional councils, Paris council, territorial assemblies in the overseas territories or by mayors) from thirty different départements or overseas territories (France is divided into a hundred administrative départements). More than 10% of those proposing a candidate cannot be from the same département or the same overseas territory. |

| **State** (date of enactment of constitution) | **Description of President** | | **Election** | | **Nomination Procedure** |
|---|---|---|---|---|---|
| | Head of State | Other | Popular | Other | |
| **Germany** 1949 | | The Federal President | | Elected by the Federal Convention, which consists of members of the federal parliament and an equal number of members of the parliaments of the Länder (states). | By political parties represented in the parliament. |
| **Greece** 1975 | | The President of the Republic | | By two-thirds majority of members of parliament. | By parliament. |
| **Ireland** 1937 | | There shall be a President of Ireland (Uachtarán na hÉireann), hereinafter called the President, who shall take precedence over all other persons … (Article 12.1) | Yes | | By twenty members of the Oireachtas or four county or county borough councils. |
| **Italy** 1947 | Yes | | | By parliament during a joint session of both chambers including fifty-eight delegates from regional parliaments. | A person over fifty years can run as a candidate but a two-thirds majority of parliament is required for election. |
| **Portugal** 1976 | | The President of the Republic | Yes | | By 7,500 - 15,000 registered voters. |

# Appendix II

## State-run award schemes in Ireland

*Aosdána*

This is a scheme established by An Chomhairle Ealaíon to honour artists whose works have made an outstanding contribution to the arts in Ireland. It offers, to those who need it, a basic level of financial security to enable them to devote their energies fully to their art.

*Comhairle na Míre Gaile (Deeds of Bravery Council)*

The Council, under the aegis of the Department of Justice, Equality and Law Reform, awards medals and certificates for deeds of bravery. A deed of bravery is defined as 'an effort to save human life involving personal risk'. It may also pay compensation to recipients or their dependants.

*The Scott Medal (An Garda Síochána)*

The medals are awarded to gardaí for acts of personal bravery in the execution of duty at the imminent risk to the life of the doers.

*The Military Medal for Gallantry and the Distinguished Service Medal (The Defence Forces)*

These medals are awarded to members of the Defence Forces for acts of gallantry and for distinguished services. Medals are also awarded for overseas service with the UN for good conduct and long service.

*Michael Heffernan Memorial Award (Minister for the Marine and Natural Resources)*

This award recognises deeds of bravery by civilians involved in Irish Marine Emergency Service co-ordinated rescues.

*Gaisce (The President's Award)*

This is a the National Challenge Award from the President of Ireland. It challenges young people to use their leisure time for positive development and the betterment of their communities.

*People of the Year Award*

This scheme, sponsored by the Electricity Supply Board and Rehab, honours people who have contributed exceptionally to the community by their work or their example.

*Honorary citizenship*

In the case of non-Irish citizens, Section 12 (1) of the Irish Nationality and Citizenship Act 1956 provides that citizenship may be granted as a token of honour to a person or the child or grandchild of a person who, in the opinion of the government, has done signal honour or rendered distinguished service to the nation. The late Sir Alfred Chester Beatty, Dr and Mrs Tiede Herrema, Mr and Mrs Tip O'Neill, Mr Jack Charlton and Mrs Jean Kennedy-Smith have been so honoured and the government recently agreed to honour Mr Derek Hill.

In addition, the Minister for Justice, Equality and Law Reform has power to grant a certificate of naturalisation (citizenship) to persons of Irish descent or association. This power was used in 1989 to grant citizenship to Stephen McDonald, a New York policeman of Irish ancestry who was paralysed as a result of a shooting incident in that city.

# Appendix III

## Some national honours

*United Kingdom*

Most honours are announced nowadays in one of the two annual sets of honours lists — one at the New Year and the other in June on the occasion of the sovereign's official birthday. The lists are published in supplements to the *London Gazette* and contain the names of those honoured and the honours conferred. The biggest number is contained within the Prime Minister's list and the honours listed are at his or her recommendation. The Diplomatic Service and Overseas list is recommended by the Secretary of State for Foreign and Commonwealth Affairs, and the Defence Services list — covering serving members of the armed forces — by the Secretary of State for Defence. The prime ministers of those realms overseas of which the Queen is sovereign, and who wish to use imperial honours, also make recommendations which are contained in further lists.

Hereditary peerages are virtually never recommended. A typical Prime Minister's half-yearly list nowadays contains perhaps six life peers, forty knighthoods — most knights bachelor — 125 CBs and CBEs, 25I SOs, 200 OBEs, 330 MBEs 300 BEMs. Many more are nominated than are selected and numbers are carefully controlled to maintain standards. Anyone may nominate and about a quarter of nominations come from ordinary individuals. The rest for the most part are nominated by government departments, covering the areas of public life for which they are responsible, and lord lieutenants, who draw names from their counties.

The Prime Minister's list for each half year contains about fifty individuals recommended 'for political services' on the nomination of the leaders of those political parties wishing to make such recommendations. All political recommendations are shown to the Political Honours Scrutiny Committee, which has the duty of considering whether each individual is a fit and proper person to be recommended. The Political Honours Scrutiny Committee considers similarly all those recommended for life peerages in the half-yearly lists and in the lists of 'working peers'. The Committee consists of three senior privy counsellors, who are not currently members of the government, and is appointed by Order in Council. All substantial payments to a political party by those recommended for life peerages or for political services must be declared to the Committee. It is an offence, under the Honours (Prevention of Abuses) Act 1925 for anyone to offer to procure an honour for money or other valuable consideration, or for anyone to give money or take other action with the object of obtaining an honour.

Special honours lists are also issued on such occasions as

a coronation or jubilee, on the dissolution of parliament or on the retirement or resignation of a Prime Minister. Honours lists do not contain the recipients of gallantry awards except when a special list is issued to mark the successful conclusion of a military operation, such as the South Atlantic list in 1983 and the Gulf list in 1991. At other times lists containing the recipients of gallantry awards are announced as occasion warrants.

Following the publication of an honours list, investitures are held at which recipients of honours, other than life peers, receive from the Queen the insignia of the honour. Knights receive the accolade. Knights and Dames, however, may adopt the prefix 'Sir' and 'Dame' from the date of the official announcement of conferral of the honour.

Ceremonial investitures of new peers by the sovereign ceased in 1615, during the reign of James I. A special ceremony, however, is held in the House of Lords when a new peer is introduced. He or she will be escorted by two peers of the same degree; his or her letters patent and writ of summons are presented to the Lord Chancellor; and he or she takes the oath of allegiance. On first attending the House of Lords a peer or peeress who has succeeded to a peerage will be greeted by the Lord Chancellor, but will not go through the same ceremonial as for a new creation.

***United States of America***

The *Presidential Medal of Freedom* is awarded to persons who have made an especially meritorious contribution to the security or national interest of the US, to world peace or other significant private or public endeavours.

The medal can only be awarded by decision of the President, who makes the final selection from a panel of nominees, compiled with the assistance of the Distinguished Civilians Service Awards Board.

Over 350 people have received the medal since its inception in 1946, this is an average of seven or eight per annum.

The *Congressional Gold Medal* is granted by the US Congress to express public gratitude to individuals whom Congress determines have made a distinguished contribution to the United States. It is not governed by legislation but by special action and can be personalised for the individual concerned.

While these are the main distinctions conferred in the US, other lesser distinctions include the *Presidential Citizens Medal*, for individuals who have performed exemplary deeds of service for the US but of a lesser impact or scope than those who would be conferred with a *Presidential Medal of Freedom*; the *President Service Award* for outstanding individuals in organisations engaged in the volunteer community service directed at solving social problems; the *President's Award for Distinguished Federal Civilian Service* for career employees of the Federal Public Service; the *National Medal for the Arts and Humanities* for those who have made an outstanding contribution to the Arts and Humanities (administered by the National Endowments of the Arts and Humanities); and *National Medals for Science and Technology* administered by the US Department of Commerce.

*Finland*

Finland has three orders of honour:

*the Order of the Cross of Liberty*
*the Order of the White Rose of Finland*
*the Order of the Lion of Finland.*

The President of Finland is the grand master of all three orders. Orders are administered by boards consisting of a chancellor, a vice-chancellor and at least four members. The decorations are conferred by the president.

*France*

There are two national honours. The first national honour, the Legion of Honour, was created by Napoleon and the second, the Order of Merit, by General De Gaulle. There are five classes in each of the orders, chevaliers, officers, commanders, grands officers, grands croix. The honours are granted to citizens and non-citizens who display merit in various areas of activity. The candidates are proposed by the ministers of the relevant departments, for example, the military are proposed by the Minister of War and persons from the cultural sector are proposed by the Minister of Culture. The President of France can also nominate persons. The list of candidates is examined by the grand chancellor and the council of the order to ensure they conform with the criteria and fundamental principles of the order. The decision whether to grant an award lies with the president. Decrees are countersigned by the prime minister.

*Germany*

There are three separate orders. Proposals are made to the president by certain office holders specified in the 1951 statute. These include federal, provincial, government and parliamentary leaders. Most honours are awarded for community or cultural work. The higher classes of the more prestigious orders usually go to those in public service. Decisions on awards are made by the president's office.

*Italy*

The Order of Merit of the Italian Republic, established in 1951, is administered by a council composed of a chancellor and sixteen other members appointed by the President of the Republic on the recommendations of the prime minister, following his or her consultation with the other members of the cabinet. Recommendations are submitted by ministers to the prime minister's office. The prime minister sends the proposals he wishes to proceed with to the chancellor of the order. The chancellor seeks the opinion of the council of the order and remits these to the prime minister. The final proposal is then submitted by the prime minister to the president who makes the final decision. Decrees are countersigned by the prime minister.

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